IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Bail Appl..No. 4711 of 2007()

CRIME NO.199/07 OF THIRUVALLAM POLICE STATION

PETITIONER/ACCUSED NO.3

SIKKANDAR M.
S/O. HAJI S.S. MUHAMED UNOS 28,
KAITHEY MILLETH NAGAR, 7TH STREET,
KELAVELI VEETHI, MADURAI.

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENTS:

STATE OF KERALA THROUGH
SUB INSPECTOR OF POLICE,
THIRUVALLAM REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4711 OF 2007

Dated this the 9th day of August, 2007

ORDER

The petitioner is the 3rd accused in a crime registered under Sec.379 of the IPC. His brother-in-law is arrayed as the 1st accused. There are two more accused. Altogether, there are four accused persons. The crime was registered on 28/6/07 raising an allegation that on the night intervening 27/6/07 and 28/6/07 a lorry belonging to the de facto complainant parked as usual by the side of a road had been thieved and clandestinely removed. There is no clue about the offender in the F.I.R. Investigation proceeded. The Investigator appears to have strained to collect information from the persons who are engaged in demolition, separation and sale of parts. The Investigator received information that the vehicle had been demolished and reduced to parts and was available in the shed of the 1st accused which he runs in

association with the petitioner in Tamil Nadu. Tell tale indications that the parts of the stolen vehicle were available in the premises of the petitioner and the 1st accused were obtained and collected. Seizure was effected. The 1st accused was interrogated. Information was collected in such interrogation that the theft proper was committed by the 1st accused along with the petitioner and some others from the place where the vehicle was parked. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is only an associate of the 1st accused and even assuming that parts of the stolen vehicle were available in the premises of the business of the petitioner and the 1st accused, no ready and instant inference of culpability for theft can be drawn. According to the petitioner, the 1st accused and the petitioner are engaged in the business of breaking down old motor vehicles; reducing them into parts and disposing of such parts. The petitioner has the requisite licence/authority to conduct such business. The mere fact that the parts of a stolen vehicle were found available in such premises is not a safe indication of culpability of the petitioner. In these circumstances, the petitioner does not deserve to suffer the trauma of arrest and

incarceration. Anticipatory bail may be granted to him, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The indications available do point to the complicity of the petitioner. This is not the occasion to weigh the available materials in golden scales to decide whether the accused is guilty or not. In any view of the matter, in the light of the materials collected, the petitioner has to be interrogated thoroughly. Custodial interrogation is absolutely essential for the conduct of a proper investigation. At any rate, the extraordinary equitable discretion under Sec.438 of the Cr.P.C. does not deserve to be invoked in favour of the petitioner, submits learned Public Prosecutor.

4. As directed by this Court, Case Diary was made available for my perusal. I have perused the same. Having considered all the relevant inputs, I am of opinion that this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. This, I am satisfied, is a fit case where the Investigator must be given an opportunity to interrogate the petitioner in custody and collect all relevant details.

5. In the result, this bail application is dismissed.

Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge